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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/26/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/780,618

Applicant(s)

SOMMER ET AL.

Examiner

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-26 is/are pending in the application.
- 4a) Of the above claim(s) 7,12,23,24 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-11,13-22 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action:
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

RESPONSE TO AMENDMENT

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35

U.S.C. 119(a)-(d). The certified copy was been filed on November 27, 2002.

WITHDRAWN REJECTIONS

2. The objection to the Information Disclosure Statement of record in paper #6, page 2, paragraph #2 have been withdrawn due to Applicant's submission of the translated German search report dated 10OCT00 in paper #7.

3. The 35 U.S.C. §112 rejections of record in paper #6, page 6-7, paragraph #5 have been withdrawn due to Applicant's amendment in paper #8

4. The 35 U.S.C. §102 rejection of claims 1-3, 5 and 10 as anticipated by Ahn et al. (3,852,877) of record in paper #6, page 8, paragraph #7 has been withdrawn due to Applicant's amendment in paper 8.

5. The 35 U.S.C. §102 rejection of claims 1-3 and 5 as anticipated by Wainer (4,073,989) of record in paper #6, page 8, paragraph #8 has been withdrawn due to Applicant's amendment in paper 8.

REJECTIONS REPEATED

6. The objection to the Specification is repeated for reasons previously of record in paper #6, pages 2-5, paragraph #3.

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7. The 35 U.S.C. §102/103 rejection of claims 8 (now claim 1) and 9 as anticipated by or over Ahn et al. (3,852,877) is repeated for reasons previously of record in paper of record in paper #6, page 9, paragraph #10.

8. The 35 U.S.C. §102/103 rejection of claims 8 (now claim 1) and 9 as anticipated by or over Wainer (4,073,989) is repeated for reasons previously of record in paper of record in paper #6, pages 9-10, paragraph #11.

9. The 35 U.S.C. §102/103 rejection of claims 1, 2, 4-6, 9 and 10 as anticipated by or over Myers (4,152,712) is repeated for reasons previously of record in paper of record in paper #6, pages 10-11, paragraph #12.

10. The 35 U.S.C. §102/103 rejection of claims 1-3, 5, 6, 9 and 10 as anticipated by or over Tukude (4,702,566) is repeated for reasons previously of record in paper of record in paper #6, pages 11-13, paragraph #13.

NEW REJECTIONS

11. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Election/Restrictions

12. Newly submitted claims 12, 23, 24 and 28 as well as amended claim 7 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally filled claims were drawn to a molded element. Amended claim 7 and

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new claim 12 are drawn to a laminated glass system. Claim 23 is drawn to an electrochromic glazing. Claim 24 is drawn to a mirror. Claim 28 is drawn to a process for sealing an opening.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7, 12, 23, 24 and 28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102/103

13. Claims 15-22 and 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hall (4,135,789).

Hall discloses a seal for a liquid crystal display comprising a glass plate (brittle-fracture material) with glass bead (sealing element) hermetically sealed in an aperture/fill port (cavity) of the glass plate. The glass plate may comprise one or several fill-ports. See column 2, line 43 to column 3, line 21. The Glass bead should be selected to have a thermal expansion closely matched to that of the surrounding glass wall (col. 3, line 51-53). From figure 3 it can be seen that the glass bead does not span the entire fill port, which allows liquid crystal material to partially fill the cavity.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459

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F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation bonded by means of connecting pressure welds or by means of welding by movement is a method of production and therefore does not determine the patentability of the product itself.

14. Claims 1-3, 5, 9, 10, 13-15, 21, 22, 26 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ahn et al. (3,852,877) for reasons previously of record in paper of record in paper #6, pages 8-9, paragraph #7 and #10.

Ahn discloses a multiplayer circuit comprising layered ceramic green sheets, each sheet is provided with at least one cylindrical through-holes and the holes are filled with a metallization paste. The metallization paste also partially covers the sheets. The metallization paste is hermetically bonded to the ceramic material. See column 2, line 66 through column 5, line 11 and figures 2 and 2a.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim,

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the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation bonded by means of connecting pressure welds or by means of welding by movement is a method of production and therefore does not determine the patentability of the product itself.

15. Claims 1-3, 5, 13, 15, 21, 22, 26, and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wainer (4,073,989) for reasons previously of record in paper of record in paper #6, pages 8-10, paragraph #8 and #11.

Wainer discloses a ceramic plate comprising a plurality of cylindrical holes filled with a metallic conductor. The type metal has the property of expanding very slightly on cooling so that the cooled article will then hermetically seal each hole with a preformed wire of metal. See column 1, line 55 to column 2, line 4, column 11, 39-42 and figures 1a and 2a.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be

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either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation bonded by means of connecting pressure welds or by means of welding by movement is a method of production and therefore does not determine the patentability of the product itself.

16. Claims 1-2, 4-11, 13-15, 17-22, and 25-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Myers (4,152,712) for reasons previously of record in paper of record in paper #6, pages 10-11, paragraph #12.

Myers discloses an optoelectronic display comprising a glass insulating member comprising at least one cylindrical opening with a spherical gallium arsenide crystal bonded in the opening. The glass insulating member and gallium arsenide crystal are coated with a conductive layer and an annular fillet. See column 2, line 44 to column 3, line 4 and figure 1.

Although Myers does not explicitly teach the limitations hermetically sealed, it is reasonable to presume that said limitations are inherent to the invention. Support for said

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presumption is found in the use of production steps (i.e. laminating and sealing material) used to produce the display. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed hermetically sealed would obviously have been provided by the process disclosed by Myers. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation bonded by means of connecting pressure welds or by means of welding by movement is a method of production and therefore does not determine the patentability of the product itself.

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17. Claims 1-3, 5-10, 13-15, 21, 22, 26 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tukude (4,702,566).

Tukude discloses an electrochromic display device comprising inter alia a counter substrate comprising a plurality of through holes filled with conductive metal and partially coated with conductors. The counter substrate may be made of glass or ceramics. See column 3, lines 28-30, column 5, lines 51-66 and figure 5.

Although Tukude does not explicitly teach the limitations hermetically sealed, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of production steps (i.e. sealing the through holes) used to produce the display. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed hermetically sealed would obviously have been provided by the process disclosed by Tukude. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation bonded by means of connecting pressure welds or by means of welding by movement is a method of production and therefore does not determine the patentability of the product itself.

ANSWERS TO APPLICANT'S ARGUMENTS

18. Applicant's arguments filed in paper #8 regarding the 35 U.S.C. §112 rejections of record have been considered but are moot since the rejections have been withdrawn.
19. Applicant's arguments filed in paper #8 regarding the objection to the specification of record have been considered but are deemed unpersuasive.

35 U.S.C. 111 recites that an Application in general should include a specification prescribed by section 112 of this title. 35 U.S.C. 112 states the specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention. Although, Applicant is correct that arrangement and content of the specification as set forth by 37 CFR 1.77(b) and MPEP 601 are merely suggested guidelines, they are strongly recommended. These guidelines

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were established to help with the clarity of the written description and has become the customary arrangement of the specification.

20. Applicant's arguments filed in paper #8 regarding the 35 U.S.C. §102 rejections of record have been considered but are moot since the rejections have been withdrawn.

21. Applicant's arguments filed in paper #8 regarding the 35 U.S.C. §102/103 rejection of Ahn et al. (3,852,877) of record have been considered but are deemed unpersuasive.

Applicant argues that the Office action alleges that the paste hermetically bonds to the ceramic material, but the reference only teaches that the paste is sintered to form the metallized capillaries. The Examiner disagrees with this statement because Ahn specifically discloses "these refractory metals (metallization paste), by virtue of their high strength bond to the ceramic material, provide hermetic seals which, after the molten conductor is added to the capillaries, completely seal the interior of the circuit package" (See Ahn '877 col. 3, lines 63-67).

Applicant also argues that Ahn does not meet the limitation where the seal is permanently bonded to the molded element by means of connecting pressure welds. As stated in the office action, the method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

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Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113.

Applicant further argues that the product produced by the claimed method has improved properties over products prepared according to the reference (Ahn). Attorney argument is not evidence unless it is an admission, in which case, an examiner may use the admission in making a rejection. See MPEP § 2129 and § 2144.03 for a discussion of admissions as prior art. The arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) (“An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness.”). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration.

Applicant’s argument that nowhere does the reference teach or suggest features of at least claims 4, 6, 7, 9 are irrelevant since the reference was not used to reject these claims.

Applicant’s arguments regarding Ahn not disclosing the limitations of claims 11-13 and 15-28 are moot due to the new grounds of rejection.

22. Applicant’s arguments filed in paper #8 regarding the 35 U.S.C. §102/103 rejection of Wainer (4,073,989) of record have been considered but are deemed unpersuasive.

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Applicant argues a product produced by the claimed method has improved properties over products prepared according to the Wainer reference. As stated in the above, the method of forming the product is not germane to the issue of patentability of the product itself and arguments of counsel cannot take the place of evidence in the record.

23. Applicant's arguments filed in paper #8 regarding the 35 U.S.C. §102/103 rejection of Myers (4,152,712) of record have been considered but are deemed unpersuasive.

Applicant argues that there is no teaching or suggestion that the diode of Myers is hermetically sealed into the substrate. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the *prime facie* case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. *In re Best*, 562 F.2d at 1255, 195 USPQ at 433.

Therefore, it is inherent that Myers is hermetically sealed because the products are identical in structure and/or composition and there is no evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product.

Applicant further argues that they cannot find the terms "laminating" or "sealing" in the reference, which were used as support for the presumption of inherency. Myers discloses "that the p-n junctions are protected by glass material. A slurry of this junction protection glass is

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spread onto the casting matrix, where it collects around the spheres and forms an annular fillet.

The slurry is then fired and dried.” Myers further discloses “the ohmic contacts made to the cores of spheres by sputtering, evaporating, or ion plating a metal strip.” (See Myers ‘712 col. 4, lines 23-34). This process reads on laminating and sealing.

24. Applicant’s arguments filed in paper #8 regarding the 35 U.S.C. §102/103 rejection of Tukude (4,702,566) of record have been considered but are deemed unpersuasive.

Applicant argues a product produced by the claimed method has improved properties over products prepared according to the Tukude reference. As stated in the above, the method of forming the product is not germane to the issue of patentability of the product itself and arguments of counsel cannot take the place of evidence in the record.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139.

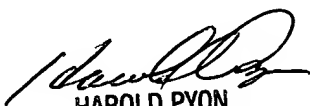
The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

2/20/03


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

2/21/03